Supreme Court, U.S.
FILED
05-314 SEP 6 - 2005
OFFICE OF THE CLERK

No. ____

In the Supreme Court of the United States

JACK MUNARI,

Petitioner,

v.

CITY OF EL PASO DE ROBLES, a municipal corporation, CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, ROBERT LATA, in his official capacity as Community Development Director of PLANNING DEPARTMENT OF THE CITY OF EL PASO DE ROBLES, STATE OF CALIRORNIA, CALIFORNIA DEPARTMENT OF FISH AND GAME AND DOES 1 through 100 inclusive,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

WILLIAM S. WALTER
Counsel of Record
A PROFESSIONAL CORPORATION
679 MONTEREY STREET
SAN LUIS OBISPO, CA 93401
(805) 541-6601

Counsel for Petitioner

Becker Gallagher Legal Publishing, Inc. 800.890.5001

QUESTIONS PRESENTED

Petitioner held an option to purchase undeveloped property in the city, submitting an application for a master plan of the development of the property. The city and the state agencies refused to schedule a public hearing on the merits of the master plan proposal and the adequacy of environmental review until Petitioner executed written commitment to purchase replacement property three times the size of the option property as "replacement" habitat for the a kit fox species which never existed on the property, at a cost of approximately $2,000,000, and provide a permanent endowment for the maintenance of the replacement property, in addition to bonding, and other exactions. The government agencies refused scheduling the public hearings until Petitioner agreed to a series of progressively dire exactions. The city denied the master plan application, and certified the environmental analysis as complying with state law which identified existing zoning as the preferred environmental alternative. As Petitioner submitted a smaller development proposal consistent with the preferred environmental alternative, the city adopted a processing moratorium and Petitioner's options rights expired.

The questions presented are:

1. May state and local government agencies impose agreements for exactions, including the acquisition for public use of other private property, as a pre-condition to scheduling or holding public hearings on development proposals?

2. Do either or both of the two prong ripeness requirements of *Williamson County v. Hamilton Bank* apply to substantive and procedural due process, equal

protection and temporary takings claims under 42 USC Section 1983?

3. Is a writ of mandamus an adequate state law remedy precluding recovery of damages under 42 U.S.C. Section 1983 for procedural and substantive due process, equal protection, and temporary takings violations under the second prong ripeness requirement of *Williamson County?*

RULE 14.1(b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner-Plaintiff-Appellant: Jack Munari.

Respondents-Defendants-Appellants: City of El Paso de Robles, City Council of the City of El Paso de Robles, Robert Lata, in his official capacity as Community Development Director of the Planning Department of the City of El Paso de Robles; the State of California, California Department of Fish and Game.

RULE 29.6 STATEMENT

Petitioner is an individual and resident of the State of California, and no parent corporation or publicly held company owns any interest in the option rights of Petitioner in the property which is the subject of this litigation.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

RULE 14.1(b) STATEMENT iii

RULE 29.6 STATEMENT iv

TABLE OF CONTENTS v

TABLE OF CONTENTS viii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTION AND STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 11

I. THERE IS A WIDESPREAD AND PERVASIVE CONFLICT OF AUTHORITY AS TO WHETHER THE FIRST AND/OR SECOND PRONGS OF *WILLIAMSON COUNTY V. HAMILTON BANK* RIPENESS APPLIES TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS, EQUAL PROTECTION AND TEMPORARY TAKINGS CLAIMS UNDER 42 U.S.C. SECTION 1983 11

A. There is a Pervasive Conflict of Appellate Conflict within and between the Federal Circuit Courts of Appeal as to the Application of Either or Both Ripeness Prongs to Substantive and Procedural Due Process, Equal Protection and Temporary Takings Claims under 42 U.S.C. Section 1983 13

B. There is Widespread Conflict between State Court Opinions about whether and how Ripeness Is Applied to the Resolution of Substantive and Procedural Due Process, Equal Protection and Temporary Takings Claims Under 42 U.S.C. Section 1983 18

II. THE CALIFORNIA COURT OF APPEAL ERRED IN AFFIRMING JUDGEMENTS DENYING PETITIONER ANY ADEQUATE STATE LAW REMEDIES TO VINDICATE AND PROTECT HIS DUE PROCESS, EQUAL PROTECTION AND JUST COMPENSATION RIGHTS UNDER THE UNITED STATES CONSTITUTION AND 42 U.S.C. SECTION 1983 22

CONCLUSION 28

APPENDIX 1a

Appendix A- 6/8/05 California Supreme Court Opinion 1a

Appendix B- 4/18/05 California Court of Appeals Opinion 2a

Appendix C- 3/23/05 California Court of Appeals Opinion 4a

Appendix D- California Superior Court Decisions 20a

TABLE OF CONTENTS

Cases

Anthony v. Franklin County,
799 F.2d 681 *reh'g denied,*
804 F.2d 681 (11th Cir. 1986) 18, 24

Arlington Heights v. Metropolitan Housing Dev. Corp.,
429 U.S. 252, 97 S.Ct. 555,
50 L.Ed.2d 450 (1977) 23

Armendariz v. Penman,
75 F.3d 1311 10

Arnett v. Myers,
281 F.3d 552 (6th Cir. 2002) 15

Bateson v. Geisse,
857 F.2d 1300 (9th Cir. 1988) 16

Bello v. Walker,
840 F.2d 1124 (3d Cir. 1988) 14, 24

Blumenthal Investment Trusts v. City of West Des Moines,
636 N.W.2d 255 . . . . . 20, 21

Board of County Com'rs of Larimer County v. Conder,
927 P.2d 1339 (Colo. 1996) 22

Breneric Assoc. v. City of Del Mar,
69 Cal.app.4th 166, 81 Cal.Rptr.2d 324 (1998) 18

Broadcast Equities, Inc. v. Montgomery County,
123 Md.App. 363,
718 A.2d 648 (Md.App. 1998) 20, 21

Broughton Trucking & Material, Inc. v. County of Will,
299 Ill.App.3d 576, 171 Ill.Dec. 299,
593 N.E.2d 1119 (Ill. 1992) 19

Caraballo-Seda v. Municipality of Hermingueros,
395 F.3d 7 (1st Cir., 2004) 13

Christopher Lake Dev. Co. v. St. Louis County,
35 F.3d 1269 (8th Cir. 1994) 16

Church of St. Paul and St. Andrew v. Barwick,
67 N.Y.2d 10, 505 N.Y.S.2d 24 (N.Y. 1986) 21

City of Iowa City v. Hagen Elecs., Inc.,
545 N.W.2d 530 (Iowa 1996) 20

City of Pompano Beach v. Yardarm Restaurant, Inc.
641 So.2d 1377 22

Coniston Corp. v. Village of Hoffman Estates,
844 F.2d 461 (7th Cir. 1988) 15

Consolidated Waste Systems, LLC. V. Metro Government of Nashville,
No. 062705 TNCIV, M2002-0252-COA-R3-CV
(Tenn. 2005) 20

Corn v. City of Lauderdale Lakes,
816 F.2d 1514 (11th Cir. 1987) 17

County of San Diego v. Miller
13 Cal.App.3d 684, 119 Cal.Rptr. 491 (1975) 25

Culebras Enters. Corp. v. Rivera Rios,
813 F.2d 506 (1st Cir. 1987) 13

Daddario v. Cape Cod Comm'n,
56 Mass.App.Ct. 764 (2002) 21

Daniels v. Williams,
474 U.S. 327, 106 S.Ct. 662,
88 L.Ed.2d 662 (1986) 22

Davidson v. Cannon,
474 U.S. 344, 106 S.Ct. 668,
88 L.Ed.2d 677 (1986) 23

Del Monte Dunes at Monterey, Ltd. v. City of Monterey,
920 F.2d 1496 (9th Cir. 1990) 16

Dolan v. Tigard,
512 U.S. 374, 1145 S.Ct. 2309,
129 L.Ed.2d 304 (1994) 26

Dougherty v. City of Chicago,
75 F.3d 348 (7th Cir. 1996) 15

Dougherty v. Town of North Hemstead Bd. of Zoning Appeals,
282 F.3d 83 (2d Cir. 2002) 14

Droveres Bank of Chicago v. Village of Hinsdale,
208 Ill.App.3d 147, 566 N.E.2d 899
(Ill.App. 2 Dist. 1991) 21

Electro-Tech, Inc. v. H.F. Campbell Co.,
433 Mich. 57, 445 N.W.2d 61 (Mich. 1989) 20

Esmail v. Mcrane,
58 F.3d 176 (7th Cir. 1995) 16

Executive 10, Inc. v. Martin County,
922 F.2d 1536 (11th Cir. 1991) 18

Felder v. Casey,
487 U.S. 131, 108 S.Ct. 2302 (1988) 27

First English Evangelical Lutheran Church of Glendale,
482 U.S. 304, 96 L.Ed.2d 250 . . . . . 9-10, 26

Forseth v. Village of Sussex,
199 F.3d 363 (7th Cir. 2000) 15

Gardens Country Club, Inc. v. Palm Beach County,
712 So.2d 398 (Fla.App.4 Dist. 1998) 21

Greater Atlanta Homebuilders Ass'n v. DeKalb County,
588 S.E.2d 694 (Ga. 2003) 21

Greenfield Mills, Inc. v. Macklin,
361 F.3d 934 (7th Cir. 2004) 15

Greenbriar, Ltd. v. City of Alabaster,
884 F.2d 1570 (11th Cir. 1989) 17

Hager v. City of West Peoria,
84 F.3d 865 (7th Cir. 1996) 15

Harding v. County of Door,
870 F.2d 430 (7th Cir. 1989) 15